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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,745

08/09/2006

Jurgen Legner

ZAHFRI P877US

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EXAMINER

NOLAN, PETER D

ART UNIT

PAPER NUMBER

3661

MAIL DATE

DELIVERY MODE

03/08/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/588,745	Applicant(s) LEGNER, JURGEN	
	Examiner Peter D. Nolan	Art Unit 3661	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 24-33.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Thomas G. Black/
 Supervisory Patent Examiner, Art Unit 3661

/Peter D Nolan/
 Examiner, Art Unit 3661

Continuation of 11. does NOT place the application in condition for allowance because: Regarding Applicant's response to Examiner's argument and associated rejection of claim 24 vis-à-vis the position of the clutch, Mikami et al. (6039673) describes the arrangement of a conventional automatic transmission where power is transmitted from the engine through the torque converter and a speed change unit. A clutch is provided between the torque converter and the speed change unit and is used to disengage the drive from the torque converter when the vehicle is in a stopped state. As shown in figure 2, the transmission of the present application does not preclude an automatic transmission being situated between the torque converter and the drive wheels.

Regarding Applicant's argument that the claims of the application are distinct from the teachings of Mikami because Mikami fails to teach an electronic controller which determines an input torque of the clutch and disengages the clutch depending on the determined input torque of the clutch and the braking signal, Examiner concurs. However, Mikami is used to teach that a drive train of a vehicle with a torque converter connected to the engine may have a clutch situated between the driving wheels and the torque converter. Mikami is not used to teach the control of the clutch.

Regarding Applicant's argument that the Rieger et al. (US 7025708 B2) does not teach where the clutch is control is based on the input torque of the clutch and the braking signal, Examiner respectfully disagrees. In Rieger column 3, lines 13-22 and column 4, lines 32-49, the output torque of the engine is analyzed to determine if it increases when the vehicle is braking. The output torque of the engine in Rieger is equal to the input torque of the clutch as explained in column 3, lines 30-35. Examiner is aware that the torque on the input of a clutch is distinct from the rotational speed of the clutch input or a difference of rotational speeds of the clutch input and output. The purpose of this particular citation to Rieger is to teach that the input of the clutch is connected to the output of the engine and the torque of the input can be derived from the engine output torque. Examiner believes that Applicant is incorrect when he states on page 9 that it appears that Rieger only considers the braking force when disengaging the clutch. The engine torque, which as explained above is directly related to the clutch input torque, is monitored when the vehicle is braked in order to modify the biting point of the clutch as explained in column 4, lines 6-40 of Rieger.

Regarding Applicant's argument that the determination of the output torque of the torque converter in Fonkalsrud et al. (US 6560549 B2) is distinctly different than the determination of the input torque of the clutch in the present application, Examiner respectfully disagrees. The inputs of the pump and the torque converter both have to be coupled to the output shaft of the engine in order to drive the pump and the torque converter, either directly or indirectly. However, to properly determine the output torque of the torque converter, using Fonkalsrud or Applicant's disclosure, one would have to know either the rotational speed of the impeller of the torque converter or the rotational speed of the pump (i.e. the rotational speed of the impeller of the pump) and, if the speed of the pump impeller is used, it would have to match or track the speed of the torque converter impeller, otherwise the torque multiplication of the torque converter could not be calculated. Examiner takes note that the original claim 13 and the allowed European Patent both claim using the speed of the impeller of the torque converter, not the hydraulic pump.